Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006

Message Text

PAGE 01 STATE 263401

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FM SECSTATE WASHDC
TO AMEMBASSY LUSAKA

C O N F I D E N T I A L STATE 263401

E.O. 11652: GDS

TAGS: SHUM, MASS, ZA

SUBJECT: CLEARANCE OF DRAFT HUMAN RIGHTS OBSERVANCE REPORT

REF; STATE 231122

1. SECTION 502B OF THE FOREIGN ASSISTANCE ACT OF 1961 AS AMENDED BY THE INTERNATIONAL SECURITY ASSISTANCE ACT AND ARMS EXPORT CONTROL ACT OF 1976 STATES IN PARAGRAPH 502B(B) THAT THE "SECRETARY OF STATE SHALL TRANSMIT TO THE CONGRESS, AS PART OF THE PRESENTATION MATERIALS FOR SECURITY ASSISTANCE PROGRAMS PROPOSED FOR EACH YEAR, A FULL AND COMPLETE REPORT... WITH RESPECT TO PRACTICES REGARDING THE OBSERVANCES OF AND RESPECT FOR INTERNATIONALLY RECOGNIZED HUMAN RIGHTS IN EACH COUNTRY PROPOSED AS A RECIPIENT OF SECURITY ASSISTANCE." PARAGRAPH (D) (2) OF SECTION 502B AS AMENDED DEFINES "SECURITY ASSISTANCE" TO INCLUDE SECURITY SUPPORTING ASSISTANCE, FMS, CERTAIN COMMERCIAL SALES, CREDITS AND OTHER PROGRAMS. THE FULL TEXT OF THE AMENDED SECTION 502B WAS TRANSMITTED BY THE REFTEL.

2. AS INDICATED IN THE REFTEL, THE DEPARTMENT HAS BEEN COLLECTING AND PREPARING INFORMATION ON THE HUMAN RIGHTS CONFIDENTIAL

PAGE 02 STATE 263401

SITUATIONS IN SECURITY ASSISTANCE RECIPIENT COUNTRIES IN

ANTICIPATION OF SUBMITTING IT TO CONGRESS EARLY NEXT YEAR AS PART OF THE CONGRESSIONAL PRESENTATION DOCUMENT (CPD)

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006

ON SECURITY ASSISTANCE. HUMAN RIGHTS REPORTING FROM OVERSEAS POSTS, INFORMATION FROM NON-GOVERNMENTAL ORGANIZATIONS SUC; AS THE INTERNATIONAL COMMISSION OF JURISTS, AMNESTY INTERNATIONAL AND FREEDOM HOUSE, REPORTS BY INTERNATIONAL ORGANIZATIONS AND CONGRESSIONAL HEARINGS ON HUMAN RIGHTS HAVE BEEN COMPILED IN A DRAFT HUMAN RIGHTS OBSERVANCE REPORT ON EACH SECURITY ASSISTANCE RECIPIENT COUNTRY. THE DRAFT REPORT ON ZAMBIA FOLLOWS.

3. THE DRAFT REPORT FOLLOWS A STANDARD FORMAT CALLING FOR A DESCRIPTION OF THE POLITICAL AND LEGAL SITUATION IN THE COUNTRY, A DESCRIPTIVE STATEMENT OF ACTUAL OBSERVANCE OF RIGHTS AND FREEDOMS IN THE UNIVERSAL DECLARATION OF HUMAN RIGHTS WITH SPECIFIC ATTENTION TO MATTERS SPECIFIED IN THE INCLUSION CLAUSE OF PARAGRAPH (D)(1) OF SECTION 502B AS AMENDED, AND A REFLECTION OF OTHER HUMAN RIGHTS REPORTING. THE -EXT OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS WAS TRANSMITTED TO THE FIELD AS AN ENCLOSURE TO 75 STATE A-1045.

4. THE DRAFT REPORT HAS BEEN PARTIALLY CLEARED IN THE DEPARTMENT AND IS BEING USED INTERNALLY IN THE CURRENT REVIEW OF PROPOSED PROGRAMS FOR FY 1978. BEFORE FINAL CLEARANCE IN THE DEPARTMENT CAN BE OBTAINED FOR THE DRAFT REPORT'S INCLUSION IN THE CPD AS AN UNCLASSIFIED DOCUMENT (WHICH MAY BE PUBLICLY DISCLOSED IF CONGRESS SO CHOOSES), THE DEPARTMENT REQUESTS THE EMBASSY TO CAREFULLY REVIEW, CORRECT, UPDATE AND CLEAR THE DRAFT. (UNTIL THE DRAFT IS CLEARED FOR RELEASE, HOWEVER, IT REMAINS A WORKING DOCUMENT CLASSIFIED CONFIDENTIAL UNDER THE PROVISIONS OF EXECUTIVE ORDER 11652).

5. IN CONDUCTING ITS REVIEW, THE EMBASSY SHOULD ENSURE THAT THE INFORMATION IN THE DRAFT CONSTITUTES A "FULL AND COMPLETE REPORT -- WITH RESPECT TO PRACTICES REGARDING THE OBSERVANCE OF HUMAN RIGHTS" IN ZAMBIA AS REQUIRED IN SECTION 502B(B) AS AMENDED.
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6. REQUESTED ACTION: THE EMBASSY IS REQUESTED TO REVIEW THE DRAFT AND PROVIDE COMMENTS, SUGGESTED REVISIONS, UPDATING INFORMATION, ADDITIONAL INFORMATION IN SATISFACTION OF THE REQUIREMENTS OF SECTION 502B(B) AS AMENDED, AND CLEARANCE BY TELEGRAM TO REACH THE DEPARTMENT NO LATER THAN NOVEMBER 15.

7. BEGIN DRAFT TEXT:

ZAMBIA

I. POLITICAL SITUATION - UNDER THE LEADERSHIP OF PRESIDENT KENNETH KAUNDA ZAMBIA BECAME INDEPENDENT FROM

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006

THE UNITED KINGDOM IN 1964. IN 1973 A NEW CONSTITUTION PUT INTO EFFECT A ,ONE-PARTY PARTICIPATORY DEMOCRACY" UNDER A STRONG PRESIDENT. THE CENTRAL COMMITTEE OF THE UNITED NATIONAL INDEPENDENCE PARTY (UNIP), THE SOLE LEGAL PARTY IN ZAMBIA, FORMULATES NATIONAL POLICY AND THE CABINET EXECUTES THE POLICY.

THE PRESIDENT IS POPULARLY ELECTED FOR A 5-YEAR TERM, BUT UNDER THE CONSTITUTION THE SOLE CANDIDATE FOR THE OFFICE IS THE PERSON SELECTED TO BE PRESIDENT OF UNIP BY THE PARTY'S GENERAL CONFERENCE. THE SECOND-RANKING ZAMBIAN OFFICIAL IS THE SECRETARY-GENERAL OF UNIP RATHER THAN THE PRIME MINISTER. ALL MINISTERS ARE SELECTED FROM AMONG THE UNIP MEMBERSHIP OF THE NATIONAL ASSEMBLY.

ZAMBIA TAKES A STRONG STAND ON HUMAN RIGHTS ISSUES IN THE UN AND OTHER INTERNATIONAL FORA, PARTICULARLY ON QUESTIONS INVOLVING RACIAL DISCRIMINATION.

II. LEGAL SITUATION - THE 1973 CONSTITUTION CONTAINS EXTENSIVE PROVISIONS REGARDING HUMAN RIGHTS. THESE ARE EXPLICITLY LISTED, AND INCLUDE LIFE; LIBERTY AND FREEDOM OF MOVEMENT; SECURITY OF THE PERSON; PROTECTION OF THE LAW; FREEDOM OF CONSCIENCE, EXPRESSION, ASSEMBLY AND CONFIDENTIAL

ASSOCIATION; FREEDOM OF RELIGION; PROTECTION OF THE PRIVACY OF THE HOME AND OTHER PROPERTY AND FREEDOM FROM DEPRIVATION OF PROPERTY WITHOUT COMPENSATION; ACCESS TO INFORMATION ON THE REASONS FOR ARREST; PROMPT TRIAL OR RELEASE FROM CUSTODY ON REASONABLY CONDITIONS; PROHIBITION OF SLAVERY, SERVITUDE AND FORCED LABOR; PROHIBITION OF DISCRIMINATION ON GROUNDS OF RACE, COLOR, CREED, TRIBE, PLACE OF ORIGIN, OR POLITICAL OPINIONS; AND PROHIBITION OF TORTURE, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT.

A JUDICIAL SYSTEM BASED ON ENGLISH COMMON LAW PROVIDES FOR HABEAS CORPUS, RIGHT OF COUNSEL, AND A SYSTEM OF APPEALS TO THE HIGH COURT. THE JUDICIARY IS INDEPENDENT, ALTHOUGH APPOINTED BY THE PRESIDENT.

ARTICLE 4 OF THE CONSTITUTION ESTABLISHES THE ONE-PARTY STATE, AND EXPRESSLY EXCLUDES FROM CONSTITUTIONAL PROTECTION ANY POLITICAL ACTIVITY OTHER THAN THAT OF UNIP.

ARTICLE 26 OF THE CONSTITUTION PROVIDES FOR SUSPENSION OF MOST CONSTITUTIONAL PROTECTIONS DURING TIME OF WAR OR

WHEN A STATE OF EMERGENCY OR OF THREATENED EMERGENCY HAS BEEN DECLARED BY THE PRESIDENT. A STATE OF EMERGENCY

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006

IS CONSIDERED TO HAVE BEEN IN EFFECT IN ZAMBIA SINCE
THE MID-1960'S.

III. ACTUAL OBSERVANCE OF INTERNATIONALLY RECOGNIZED
HUMAN RIGHTS.

A. INTEGRITY OF THE PERSON.

ARTICLE 3: THE RIGHT TO LIFE, LIBERTY AND SECURITY OF
THE PERSON IS RESPECTED IN ZAMBIA. IN LATE 1974/ EARLY
1975, A TRIBAL FEUD AMONG ZAMBIA-BASED ELEMENTS OF THE
MAIN RHODESIAN GUERILLA ORGANIZATION (ZANU) CULMINATED
IN THE ASSASSINATION OF A HIGH-RANKING LEADER. THE
ZAMBIAN AUTHORITIES THEN DETAINED A NUMBER OF ZANU
CADRE AND INSTITUTED AN INDEPENDENT INTRA-AFRICAN
COMMISSION OF INQUIRY INTO THE MATTER. SEVERAL OF
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PAGE 05 STATE 263401

THOSE CONSIDERED RESPONSIBLE HAVE RECENTLY BEEN BROUGHT
TO TRIAL IN ZAMBIAN COURTS ON CRIMINAL CHARGES.

ARTICLE 5: TORTURE AND CRUEL AND DEGRADING PUNISHMENT
ARE PROHIBITED, AND THERE HAVE BEEN NO ALLEGATIONS OF
SYSTEMATIC USE OF TORTURE AGAINST POLITICAL OR OTHER
PRISONERS. ZAMBIAN COURTS HAVE THROWN OUT CONFESSIONS
ALLEGED TO HAVE BEEN OBTAINED BY "THIRD DEGREE" METHODS.
ZAMBIAN JAILS ARE ACKNOWLEDGED TO BE OVERCROWDED AND
UNSANITARY, BUT SOME RECENT IMPROVEMENT IS REPORTED.

ARTICLE 8: AN INDIVIDUAL WHO CONSIDERS HIS RIGHTS TO
HAVE BEEN OR ARE LIKELY TO BE CONTRAVENED THROUGH
UNLAWFUL ARREST OR DETENTION MAY APPLY TO THE HIGH
COURT FOR REDRESS; IN 1972 SEVERAL FORMER POLITICAL
DETAINEES SUCCESSFULLY COLLECTED DAMAGES FOR ASSAULT AND
FALSE IMPRISONMENT.

ARTICLE 9: UNDER HIS EMERGENCY POWERS, THE PRESIDENT
HAS WIDE DISCRETION TO DETAIN OR RESTRICT THE MOVEMENT
OF INDIVIDUALS. THOSE DETAINED ENJOY CERTAIN RIGHTS,
AMONG THEM THE RIGHT TO RECEIVE NOTICE OF THE REASONS
FOR DETENTION, PUBLICATION OF THE FACT OF DETENTION,
ACCESS TO COUNSEL, AND THE RIGHT TO SEE JUDICIAL
REVIEW OF THE DETENTION ORDER AFTER ONE YEAR. HOWEVER,
HABEAS CORPUS IS NOT AVAILABLE UNDER PRESIDENTIAL
DETENTION ORDERS , AND THE DETAINING AUTHORITY IS NOT
OBLIGED TO ACCEPT THE RECOMMONDATIONS OF THE JUDICIAL
REVIEW TRIBUNAL. THE ZAMBIAN COURTS HAVE CONSISTENTLY
UPHELD THE PRESIDENTS USE OF HIS DETENTION POWERS

UNDER STATE OF EMERGENCY PROVISIONS OF THE CONSTITUTION.
THE PRESIDENT'S DETENTION POWERS HAVE BEEN USED WITH
CONSIDERABLE FREQUENCY IN RECENT YEARS AGAINST POLITICAL

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006

OPPONENTS; UNRULY LIBERATION GROUP MEMBERS; COMMON CRIMINALS; STRIKING UNIVERSITY STUDENTS AND PROFESSORS; AND VIOLATORS OF CURRENCY CONTROL REGULATIONS. THE NUMBER OF THOSE CURRENTLY IN DETENTION PROBABLY EXCEEDS 200. SO FAR AS CAN BE DETERMINED, THE CONSTITUTIONAL CONFIDENTIAL

SAFEGUARDS MENTIONED ABOVE ARE GENERALLY ADHERED TO. HOWEVER, THERE IS NO REQUIREMENT FOR THE GOVERNMENT TO BRING FORMAL CHARGES OR TO PROVIDE DETAINEES WITH SPECIFIC EVIDENCE SUPPORTING THE DETENTION ORDER. IN PRACTICE, MOST DETAINEES ARE EITHER RELEASED OR FORMALLY CHARGED ONCE INVESTIGATION OF THEIR CASES IS COMPLETED, BUT A FEW HAVE BEEN CONTINUOUSLY DETAINED FOR MONTHS OR YEARS.

ARTICLE 10 AND ARTICLE 11: RIGHTS TO A FAIR HEARING AND TRIAL ARE GENERALLY OBSERVED, AS ARE THE FAMILIAR SAFE-GUARDS OF ENGLISH COMMON LAW. LAWYERS HANDLING EVEN SENSITIVE POLITICAL CASES HAVE CONFIRMED THEIR CONTINUING CONFIDENCE IN THE INTEGRITY AND INDEPENDENCE OF THE ZAMBIAN JUDICIARY. HOWEVER, AS NOTED ABOVE, NORMAL JUDICIAL SAFEGUARDS DO NOT APPLY IN THE CASE OF THOSE MERELY DETAINED AND NOT FORMALLY CHARGED WITH A CRIME. LENGTHY PERIODS OF DETENTION HAVE SOMETIMES PASSED BEFORE AN INDIVIDUAL WAS BROUGHT BEFORE THE COURTS.

B. OTHER IMPORTANT FREEDOMS.

FREEDOM OF RELIGION IS CONSTITUTIONALLY GUARANTEED AND STRONGLY UPHELD BY PRESIDENT KAUNDA. THE EXCEPTIONS HAVE BEEN THE LUMPA SECT, BANNED IN 1964 AS A THREAT TO PUBLIC ORDER, AND ANOTHER SMALL SECT SUPPRESSED FOR ALLEGED SEXUAL IMMORALITY. NO SYSTEMATIC PERSECUTION OF THE CONTROVERSIAL JEHOVAH'S WITNESSES HAS BEEN REPORTED IN ZAMBIA, ALTHOUGH SOME LOCAL HARASSMENT HAS REPORTEDLY OCCURRED.

THE ZAMBIAN GOVERNMENT PUTS GREAT STRESS ON THE EQUALITY OF ALL PERSONS BEFORE THE LAW, A PRINCIPLE WHICH APPEARS TO BE WIDELY UPHELD.

FREEDOM OF EXPRESSION, ASSEMBLY AND POLITICAL ACTIVITY ARE CIRCUMSCRIBED BY THE BAN ON ALL POLITICAL ACTIVITIES OR EXPRESSIONS UNACCEPTABLE TO UNIP OR THE ZAMBIAN GOVERNMENT. MEDIA CRITICISM OF GOVERNMENT PERFORMANCE IS PERMITTED IF "CONSTRUCTIVE," BUT SUCH CRITICISM OF

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Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006

Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006

UNIP'S IDEOLOGY AND BASIC POLICIES IS NOT OFTEN TOLERATED. CRITICISM OF THE PRESIDENT IS PUNISHABLE BY FINE OR IMPRISONMENT. ALTHOUGH CENSORSHIP OF FOREIGN MATERIALS IS NOT STRINGENT, THE OVERALL TREND IN ZAMBIA CLEARLY IS TO ESTABLISH MORE RATHER THAN LESS CONTROL OVER EDUCATION AND PUBLIC EXPRESSION.

III.OTHER REPORTING.

FREEDOM HOUSE DESCRIBES ZAMBIA AS "PARTLY FREE." IN ITS 1974/75 ANNUAL REPORT, AMNESTY INTERNATIONAL APPLAUDED ZAMBIA'S EFFORTS FOR A PEACEFUL SOLUTION TO SOUTHERN AFRICAN PROBLEMS, BUT EXPRESSED SERIOUS CONCERN OVER CONTINUED DETENTION WITHOUT TRIAL AND ALLEGATIONS THAT INSTANCES OF TORTURE CONTINUE TO OCCUR IN ZAMBIAN PRISONS. ROBINSON

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Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006

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Margaret P. Grafeld
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EO Systematic Review
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